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Supreme Court of the United States

OCTOBER TERM, 1943

No. 174

WILLIAM I. BASSETT, also known as William Bassett,
Petitioner,

vs.

MARGARET HELEN BASSETT, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

SAMUEL PLATT,
First National Bank Building,
Reno, Nevada,
Counsel for Petitioner.

June 14th, 1944.

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No.

WILLIAM I. BASSETT, also known as William Bassett,
Petitioner,

vs.

MARGARET HELEN BASSETT, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner William I. Bassett, also known as William Bassett, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered on the 28th day of March, 1944, reversing the judgment of the United States District Court for the District of Nevada which denied to the respondent recovery of certain sums of maintenance money, and remanding the case with directions to the trial court to enter judgment for the respondent in the full amount of separate maintenance money judgments sued upon .

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals (R. 155) is as yet unreported. The opinion of the United States District Court (R.115) is reported in 51 Fed. Supp. 545.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered March 28, 1944 (R. 155). Petition for rehearing was denied May 5, 1944. The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1924, 43 Stat. 936, 28 U. S. C. Sec. 347(a) and Rule 38 of the Revised Rules of this Court, in particular subdivision 5(b) of said Rule 38.

SUMMARY STATEMENT OF THE CASE.

During the month of August, 1934, petitioner William Bassett and respondent Margaret Bassett were husband and wife and resided in the State of New York. The husband left that State during August, 1934, and established a bona fide domicile and residence in the State of Nevada, where he has ever since for upwards of ten years, continuously resided. Thereafter, on August 30, 1934, the wife sued the husband in the New York Supreme Court for separate maintenance, in which suit he appeared generally, and, on June 22, 1935, obtained a judgment which provided for a monthly payment to her for her support and maintenance. The judgment was later modified by reducing the amount of the monthly payment. On April 5, 1941, a judgment was entered

in the New York Court for unpaid support or alimony in the sum of $3,900.00, and, on August 1, 1941, a similar judgment was entered in the sum of $760.65 and $10.00 costs.

On June 5, 1939, or nearly two years *before* said judgments for unpaid support and alimony were entered, the husband William Bassett was granted an absolute and final default decree of divorce from his wife Margaret Bassett, by the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, a court of competent jurisdiction, all of which the wife well knew. Due process was had under Nevada law by the delivery of a certified copy of the complaint attached to a copy of the summons upon the wife personally in New York. She made no appearance.

The Nevada divorce decree provided, among other things, "That the plaintiff be, and he is hereby released from any further obligation to support and maintain the defendant, and he is discharged and released from the duties and obligations to support the said defendant under that certain judgment entered against him by the Supreme Court of Nassau County, State of New York, entered on or about the 26th day of April, 1935, and thereafter modified on or about the 16th day of April, 1937, or otherwise."

Margaret Bassett brought the instant action in the District Court of the United States for the District of Nevada for the recovery of the sum of the two New York judgments; or $4,570.65 with interest at six per

cent per annum since the dates of the respective judgments. William Bassett pleaded the Nevada divorce decree as a defense and set up eight separate affirmative defenses (R. 7-13). The district court determined that the said divorce decree was controlling and dismissed the action (R. 115-120).

SPECIFICATION OF ERRORS TO BE URGED.

1. The court below erred in assuming jurisdiction as a Federal court to review and set aside part of a final and unassailed judgment and decree of a State court, which relieved petitioner of all further liability under the New York judgments and relieved him of jurisdictional liability herein.

2. The court below erred in ignoring the opinion of this court in Williams v. North Carolina, 317 U. S. 287 in effect holding, that the Nevada divorce decree herein was and is binding upon the courts of New York, and that under the law of New York and Nevada, an absolute divorce terminates all liability under a separate maintenance judgment, founded upon the relation of husband and wife, and renders such judgment of no further force and effect.

3. The court below erred in not giving retrospective effect to the Williams' decision and accordingly holding that two years before the New York judgments were obtained and later sued upon here, the parties were no longer husband and wife.

4. The court below erred in not adopting the follow-

ing legal principle, that is, that under the erroneous pronouncement in Haddock v. Haddock, 201 U. S. 562; 50 Law. Ed. 867, no full faith and credit could have been given in New York to Petitioner's divorce decree. It was a defense not then available to him in New York. It later first became available to him (under the Williams' decision), after suit was brought against him, herein, in Nevada. It was, therefore, properly pleaded in Nevada, and, under the law of Nevada, an absolute divorce "extinguishes the subject matter which forms the basis of an action or proceeding for separate maintenance." (R. 120). It stops all further maintenance payments.

5. The court below erred in refusing to direct the trial court to give full faith and credit to the Nevada divorce decree, and in refusing to apply in the case at bar the applicable law of the forum in which the case was tried, and in refusing to give effect to the laws and judicial decisions of the State of Nevada.

6. The court below erred in reversing the judgment of the trial court and in remanding the case with directions to enter judgment for respondent for the full amount of the New York judgments sued upon.

QUESTION OF LAW PRESENTED.

Is this petitioner, who has been an unqualified domiciliary and resident of the State of Nevada for upwards of ten years, and who obtained a good, absolute and final Nevada default decree of divorce from his wife

(whose marital domicile was and is New York), likewise, under the full faith and credit divorced in New York? And, if so, was the wife estopped, by New York law, from recovering separate maintenance, under a New York separate maintenance judgment, which had accrued since the entry of the divorce decree? Further, since under the rule of the overruled Haddock case, the petitioner had no legal right to interpose his defense of the Nevada decree to the New York actions, was he justified in law to plead the Nevada decree at his first available opportunity after the decision in the Williams' case and after he was sued in Nevada in the instant action? Was the trial Federal district court right in allowing his plea and applying the law of the forum by dismissing the action, upon the ground that the divorce destroyed the status of husband and wife, and that it rendered the separation judgment, based on the relation of husband and wife, no longer enforceable? Should superior full faith and credit be given the New York judgments over the judgment of the forum? Did the Circuit Court of Appeals have the jurisdictional power to set aside in part the decree of the State court, relieving the petitioner of all liability?

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

First. The case presents a constitutional law and conflict of laws question of general importance.

Second. The question is here submitted to this honorable court squarely for the first time as to whether

a judgment for separate maintenance, based on the relation of husband and wife, falls within an exception to the general full faith and credit rule, in that only such arrearages as accrue under it *up to the time of divorce* may be properly the subject of suit in the jurisdiction of a sister State.

Third. The question is here submitted to this honorable court squarely for the first time as to whether in the event of such a suit brought in a sister State, a valid decree of divorce, theretofore obtained in the sister State, may be properly pleaded in defense thereof.

Fourth. The question is here submitted to this honorable court squarely for the first time as to whether a judgment and decree of divorce, as interpreted by the law of the forum, must yield to foreign judgments, later obtained, for alleged arrearages in separate maintenance.

Fifth. The judgment and opinion of the Circuit Court of Appeals ignores the opinion of this honorable court in the Williams' case, indulges in no presumption of the validity of the Nevada divorce decree in New York, declines to apply either the law of New York or of Nevada as to the effect of divorce upon separate maintenance judgments, and erroneously assumes jurisdiction to review and set aside a portion of a judgment and decree of a Nevada State court.

Sixth. The dicta (See annotated note 39 A. L. R. 640 and 42 A. L. R. 1376) in Barber v. Barber, 21 How. 582,

16 L. Ed. 226, decided in 1859, may not be reconciled with the later pronouncements of this honorable court, declaring notable exceptions to the application of full faith and credit and reversal of the rule, such as Klaxon v. Stentor Electric Mf'g. Co. Inc., 313 U. S. 487-498, 85 L. Ed. 1477; Griffiin v. McCoach, 313 U. S. 498-507, 85 L. Ed. 1481; Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201-211, 86 L. Ed. 152; Erie Railroad Company v. Harry J. Tomkins, 304 U. S. 64, 82 L. Ed. 1188, and Williams v. North Carolina, 317 U. S. 287, 87 L. Ed. 279.

WHEREFORE, the petitioner respectfully prays the allowance of a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to the end that the record in said cause may be removed into this Honorable Court and that the errors complained of may be examined and corrected and said judgments reversed.

Respectfully submitted,

SAMUEL PLATT,
Counsel for Petitioner.